

From: Charlie Hunt
To: Microsoft ATR
Date: 1/25/02 11:28am
Subject: Microsoft Settlement

I would like to express my concerns on the proposed MicroSoft settlement. Below are a list of concerns.

1. The DOJ settlement would not restrict the core way in which Microsoft unlawfully maintained its Windows operating system (OS) monopoly, namely bundling and tying competing platform software (known as ?middleware?) like Web browsers and Java, to the OS. The Court of Appeals specifically rejected Microsoft?s petition for rehearing on the bundling issue. Yet the settlement has chosen to ignore this fact.
2. The DOJ settlement has no provisions to create competition in the OS market that Microsoft unlawfully monopolized. The D.C. Circuit ruled that a remedy must ?unfetter [the] market from anticompetitive conduct? and . . . ?terminate the illegal monopoly,? but the DOJ settle will do nothing to restore competition with Windows. The DOJ settlement allows firms better access to information (known as ?APIs?) necessary to make software work with Windows, which only reinforces the Windows monopoly.
3. The DOJ settlement has no provisions directed to new markets where Microsoft is using the same bundling and restrictive practices to preserve and extend its Windows monopoly. Typified by Windows XP, which ties Internet services, digital media software and instant messaging (among other features) to Windows, Microsoft is demolishing potential competition in these new markets just as it did in 1995-98 to Netscape. The Court of Appeals ruled that a remedy must ?ensure that there remain no practices likely to result in monopolization in the future,? but the DOJ settlement does not even try to restrict ways in which Microsoft could (and already has)leverage its Windows monopoly in the future.

The settlement also suffers from a serious problem of ineffectiveness, because even its limited provisions (API disclosure, icon removal, etc.) rely exclusively on OEMs to pro-vide a competitive alternative to Windows. PC manufacturers have recognized Microsoft?s power and have long refused to depart from the Microsoft strategic plan, since it is the source of their revenue.

In today's OEM market, with rapidly declining prices and profit margins, failures and mergers, and the slowing of PC demand for the first time in more than a decade due to market saturation, there is no likelihood that any OEM will use its small freedoms under the settlement to choose to compete with Microsoft.

In summary, the settlement would not prevent the central ways Microsoft was found to have illegally maintained its Windows monopoly, (2) does nothing to restore competition in the OS market, an express Court of Appeals requirement for a Microsoft remedy, and (3) has no provisions directed to Windows XP and other new endeavors of Microsoft to extend and protect its monopoly to new markets in the future, another express Court of Appeals requirement for a Microsoft remedy.

Sincerely,

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(Software Architect)